

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 10, 2015 appellant, then a 48-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her left leg and groin due to standing and walking approximately seven hours per day while in the performance of duty. She explained that she had to carry a heavy satchel which placed pressure on her lower extremity and that her employment duties required her to get in and out of her vehicle from 60 to 80 times per day. Appellant noted that she became aware of her condition on July 15, 2015 and that it was causally related to her federal employment on August 10, 2015. She did not stop work.

By development letter dated August 27, 2015, OWCP advised appellant that medical evidence was necessary to establish her claim. It requested that she submit a comprehensive narrative medical report from her attending physician, which included a diagnosis of a medical condition and a rationalized medical opinion supporting causal relationship between the diagnosed condition and the factors of her federal employment. OWCP afforded appellant 30 days to submit the requested medical evidence.

OWCP subsequently received an August 21, 2015 progress/treatment note from Dr. Jose A. Pelayo, a Board-certified internist, who diagnosed chest wall strain and hip/thigh strain. Dr. Pelayo noted that appellant complained of left chest pain and leg pain, which dated back at least four weeks. Appellant's symptoms reportedly worsened during the course of her workday, which included delivering mail and carrying a more than 30-pound bag, usually on her left shoulder. She did not recall any particular injury, but reported that her symptoms quickly worsened when performing her described employment duties. Dr. Pelayo indicated that appellant's symptoms were "highly likely due to/worsened by work activities." He excused appellant from work until August 30, 2015, which he later extended through September 13, 2015.

On September 18, 2015 Dr. Mary W. DuQuette, a Board-certified physiatrist, examined appellant and diagnosed chest wall strain, limb pain, and left groin pain. She indicated that it was not clear whether appellant's complaints were employment related. Dr. DuQuette noted that she did not feel she could comment regarding appellant's left chest discomfort, which appellant described as being associated with the positioning of her mailbag.

OWCP also received October 1, 2015 magnetic resonance imaging (MRI) scans of appellant's left hip and lumbar spine. Appellant's left hip MRI scan was negative for greater trochanteric bursitis, and there was no evidence of stress fracture or osteonecrosis. However, there

³ Docket No. 17-0474 (issued March 23, 2018).

was evidence of a nondisplaced split through the base of the anterior acetabular labrum, without focally-advanced cartilage loss, synovitis, or features of femoroacetabular impingement. Appellant's lumbar MRI scan revealed multi-segmental disc degeneration and spondylosis, at L3-4 there was a small left foraminal disc protrusion, without nerve root impingement or spinal stenosis. At L4-5, there was a small right paramedian disc protrusion, without nerve root impingement.

By decision dated October 22, 2015, OWCP denied appellant's occupational disease claim, as the medical evidence of record failed to establish causal relationship between the diagnosed conditions and her accepted employment factors.

OWCP subsequently received a September 18, 2015 note from Dr. DuQuette excusing appellant from work through November 19, 2015. Additionally, it received October 21, 2015 progress notes from Dr. DuQuette who reviewed appellant's recent MRI scans and diagnosed limb pain, left groin pain, left-side L3-4 herniated nucleus pulposus, and left hip labral tear, degenerative.

OWCP received a January 6, 2016 duty status report (Form CA-17) which contained an illegible diagnosis.

On October 24, 2016 appellant requested reconsideration. She indicated that she had attached additional medical evidence for OWCP to review in connection with its October 22, 2015 decision. However, no additional medical evidence was received.

By decision dated November 7, 2016, OWCP denied appellant's request for reconsideration, as it was untimely filed and failed to demonstrate clear evidence of error.

On January 3, 2017 appellant, through counsel, appealed the November 7, 2016 decision to the Board. In its March 23, 2018 decision, the Board found that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The Board found that her October 24, 2016 request for reconsideration was timely filed as one year from October 22, 2015 elapsed on Saturday, October 22, 2016 and therefore she had until the next business day, Monday, October 24, 2016 to file a timely request for reconsideration. The Board found that appellant's request for reconsideration should have been reviewed under the standard for reviewing timely requests for reconsideration pursuant to 20 C.F.R. § 10.606(b)(3). The Board set aside the November 7, 2016 decision and remanded the case to OWCP for an appropriate final decision on her timely request for reconsideration.

By decision dated April 23, 2018, OWCP denied modification of the October 22, 2015 decision.

On May 7, 2018 OWCP appellant requested reconsideration. In a May 2, 2018 statement, she indicated that she was submitting additional medical evidence.

In an October 5, 2016 report, Dr. Michael Muldoon, a Board-certified orthopedic surgeon, noted that he first evaluated appellant in January 2006 for left hip symptoms that developed abruptly while she was walking her route and getting in and out of her vehicle. He indicated that she initially was unable to work, eventually was able to return to work, but continued to have moderate pain and a slight limp. Dr. Muldoon related that appellant walked for prolonged periods

of time, which was necessitated by her employment duties. He advised that she had moderate pain and a slight limp, as well as catching and locking in the hip, and pain when walking for prolonged periods. Dr. Muldoon examined appellant and diagnosed chondrolabral pathology and radiographic evidence of impingement. He advised: “It is my opinion that this otherwise very active, 49-year-old woman without any arthritis, developed a breakdown at the chondrolabral junction of the left hip as a result of her exposures in the workplace as a mail carrier. The exact onset of symptoms coincided with an episode at work and, although this may have been an attritional process initially, the relatively acute presentation also makes it more medically probable that this is an employment-related injury. I strongly support that this be a compensable workplace injury.” Dr. Muldoon recommended arthroscopic surgery.

By decision dated July 31, 2018, OWCP denied modification of the April 23, 2018 decision. It found that the medical evidence of record was speculative and not well rationalized.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

Dr. Pelayo's opinion, in an August 21, 2015 progress/treatment note, that appellant's diagnosed conditions were "highly likely due to/worsened by work activities," is speculative in nature.⁸ To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.⁹ Thus, this evidence is insufficient to meet appellant's burden of proof.¹⁰

Dr. DuQuette, in her September 18, 2015 report, diagnosed chest wall strain, limb pain, and left groin pain, and advised that it was not clear whether appellant's complaints were employment related. She further advised that she could not comment regarding appellant's left chest discomfort. The Board finds that this report does not support that appellant's employment factors as a rural mail carrier caused or aggravated the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹

Similarly, OWCP received a September 18, 2015 work excuse, an October 21, 2015 progress report, and a January 6, 2016 Form CA-17 from Dr. DuQuette. Dr. DuQuette again did not offer any opinion regarding causal relationship in these reports.¹² As such her reports are insufficient to establish appellant's claim.

In an October 5, 2016 report, Dr. Muldoon, noted that he first evaluated appellant in January 2006 for left hip complaints that developed abruptly while she was walking her route and getting in and out of her vehicle. The Board notes that appellant has not indicated that she sustained an injury in 2006. Dr. Muldoon did not provide any medical records from that time. While he noted appellant's activities at work involved walking for prolonged periods of time, and opined that she developed a breakdown at the chondrolabral junction of the left hip as a result of her activities as a mail carrier, Dr. Muldoon did not provide medical rationale to explain his conclusion. He did not explain how the mechanism of injury would have physiologically caused

⁷ *Id.*

⁸ See *J.B.* Docket No. 18-1751 (issued May 6, 2019); *B.M.*, Docket No. 17-1079 (issued June 4, 2018).

⁹ *D.P.*, Docket No. 18-1647 (issued March 21, 2019).

¹⁰ See *Y.C.*, Docket No. 17-1938 (issued January 7, 2019).

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

the diagnosed conditions.¹³ This is especially important as there are no records of any incident at work in 2006 to which Dr. Muldoon attributes the onset of appellant's symptoms. Dr. Muldoon did not provide a rationalized medical explanation as to how her employment factors caused her diagnosed conditions. His report is therefore of limited probative value.¹⁴

OWCP also received an October 1, 2015 diagnostic test report, however, the Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment factors and a diagnosed condition.¹⁵

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁶ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁷ As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated her diagnosed conditions, appellant has not met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

¹³ *N.B.*, Docket No. 19-0079 (issued June 14, 2019).

¹⁴ *Id.*

¹⁵ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

¹⁶ *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *see Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board